PUBLIC PROSECUTOR v. LIEW CHOO KWONG & ORS.

[A. Cr. J. (Ismail Khan J.) September 5, 1962]

[Seremban — Criminal Appeal No. 14 of 1962]

Criminal Law and Procedure — Summons — Nature of offence not set in body of the summons but set out on annexure — Annexure not authenticated by Magistrate — Jurisdiction of Magistrate to hear case.

This was an appeal against the order of the learned President in discharging the respondents who were charged with offences punishable under section 28(1) of the Life Assurance Companies Ordinance, 1948. The summons in this case was issued with the approval of the Magistrate, but the nature of the offence with which they were charged was not set out in the body of the summons but on a piece of paper attached to the summons. The annexure was not authenticated by the Magistrate. At the hearing the respondents appeared and raised an objection to the issue of the summons on the sole ground that "the annexure to the summons was not authenticated and that the issue thereof was an abuse of legal powers." In discharging the respondents the President relied on *Public Prosecutor* v. *Kok Heng & Ors.* (1) as authority for the proposition that the jurisdiction of a Magistrate to hear a case is dependent upon the accused being properly summoned or arrested.

Held: the President was wrong in discharging the accused. Once an accused is before the Court it has jurisdiction to try him, irrespective of the manner in which he comes before the court.

Cases referred to:—

(1) *Public Prosecutor* v. *Kok Heng & Ors.* [1948] M.L.J. 171.

(2) *The Queen* v. *Hughes* (1879), 4 Q.B.D. 614.

(3) *Saminathan* v. *Public Prosecutor* [1937] M.L.J. 39.

MAGISTRATE'S CRIMINAL APPEAL.

Mohd. Salleh bin Abas (Deputy Public Prosecutor) for the appellant.

Edgar Joseph Jr. for the respondents.

Cur. Adv. Vult.

Ismail Khan J.: This is an appeal against the order of the learned President, Sessions Court, Seremban, in discharging the three respondents who were charged with offences punishable under section 28(1) of the Life Assurance Companies Ordinance, No. 38 of 1948. The discharge did not amount to an acquittal.

In this case the issue of summons against the respondents was approved by the Magistrate but the nature of the offence with which they were to be charged was not set out in the body of the Summons but on a piece of paper attached to the summons. The annexure was not authenticated by the Magistrate.

At the hearing of the case the respondents appeared and an objection was raised to the issue of the summons on the sole ground that "the annexure to the summons was not authenticated and that the issue thereof was an abuse of legal powers". Reference was made to the case of *Public Prosecutor* v. *Kok Heng & 2 Ors.*(1) That case is similar to this one with the exception that there a warrant was issued, instead of a summons. In that case Laville J. observed that "in each case a typed piece of paper is attached to the warrant bearing the charge. The annexure is not authenticated by the Magistrate and could have been put on by anyone at any time. The result is a licence to the police to arrest the men named in the warrants and charge them with any crime. Such a warrant is a misuse of legal powers and should never have been issued in that State by the Magistrate concerned." Now, there is nothing in these observations to which objection could be taken, but it must be pointed out that nowhere in his judgment did the learned Judge make any attempt to deal with the effect of the accused having appeared on such a warrant. It is to be observed that the learned Judge did in fact try the case, but acquitted the accused as he was not satisfied that the prosecution had made out a case which would warrant a conviction. In this case, having heard the respondents' objection, the President made an order for their discharge and it would appear from his grounds of judgment that he relied on the observations of Laville J. in the case cited as an authority for the proposition that the jurisdiction of a Magistrate to hear a case is dependent upon the accused being properly summoned or arrested. In this he was wrong. It is clear from the authorities, both English and local, that once an accused is before the Court it has jurisdiction to try him, irrespective of the manner in which he comes before the Court. In *The Queen* v. *Hughes,*(2) a person was brought before the Court on a warrant of arrest illegally issued. The Court consisting of some ten Judges (one dissenting) held that the justices had jurisdiction to hear the charge in spite of the illegality of the warrant upon which the accused was brought before them. Huddleston B. said at page 633 :— "Principle and the authorities seem to shew that objections and defects in the form of procuring the appearance of a party charged will be cured by appearance. The principle is, that a party charged should have an opportunity of knowing the charge against him, and be fully heard, before being condemned. If he has the opportunity, the method by which he is brought before the justices cannot take away the jurisdiction to hear and determine, when he is before them". The same principle was followed in the case of *Saminathan* v. *Public Prosecutor,*(3) where Aitken J. said : — "It seems to me that there is an overwhelming mass of authority for the proposition that the legality or illegality of a man's arrest does not concern the Court which is trying him. That Court is only concerned with the charge brought against him; he has his remedy for the illegal arrest elsewhere."

The appeal is therefore allowed, the order of the learned President set aside and the case is remitted to him to be dealt with according to law

Appeal allowed.

Solicitors: *Joseph & Son.*